

State of Maryland

Board of Public Works

BPW Advisory No.: **P-005-96 (REVISED)**

Original Date: **October 22, 1996**

Revision Date: December 15, 1999

Subject: **Reciprocal Application of Other States' Preferences**

Effective Date: January 24, 2000

Purpose: To provide guidance to procurement agencies in the reciprocal application of preferences that other states use against Maryland-based contractors.

Background: On December 15, 1999, the Board of Public Works adopted revisions to COMAR 21.05.01.04 which authorizes procurement agencies to apply reciprocal preferences when awarding contracts based on competitive sealed bidding, contracts based on competitive sealed proposals, and contracts for architectural or engineering services.

Governing Regulation:

.04 *Reciprocal Preferences.*

A. *Definitions.*

(1) *In this regulation, the following terms have the meanings indicated.*

(2) *"Preference" means:*

(a) *A percentage preference;*

(b) *An employee residency requirement; or*

(c) *Any other law, policy, or practice that favors a resident over a nonresident.*

(3) *"Resident business" means a business whose principal office or principal base of operations is located in the State.*

(4) *"Services" means services, architectural services, construction-related services, engineering services, or energy performance contract services.*

B. *Conditions. A procurement agency may give a preference to a resident business if:*

- (1) *The resident business is a responsible:*
 - (a) *Bidder, under a competitive sealed bid,*
 - (b) *Offeror, under a competitive sealed proposal, or*
 - (c) *Provider of architectural or engineering services;*
- (2) *A responsible bidder, offeror, or provider of architectural or engineering services whose principal office or principal base of operations is in another state submits the lowest responsive bid, the most advantageous offer, or a qualification statement or a technical proposal concerning architectural or engineering services;*
- (3) *The state in which the nonresident's principal office is located or the state in which the nonresident has its principal operation through which it would provide the goods or services gives a preference to its residents through law, policy, or practice; and*
- (4) *The preference does not conflict with a federal law or grant affecting the procurement contract.*

C. Application. A preference under this regulation shall be identical to the preference that the other state, through law, policy, or practice, gives to its residents.

Policy: Although Maryland law does not authorize procurement officers to favor resident bidders in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. Applying a reciprocal preference means that Maryland procurement agencies – when evaluating bids, offers, or A/E expressions of interest – may apply the same preference against an out-of-State business that the business's home state or the state in which the nonresident has its principle operation through which it would provide the goods or services, would apply against a vendor whose principal office or base of business is located in Maryland.

Procurement agencies must determine whether the state in which out-of-State bidders or offerors are located afford their resident businesses a preference in competing for government contracts. Preferences to be considered in this context include any preferences that favor a resident business over a non-resident business, such as a percentage preference or discount, point allowance, or employee residency requirement. Preferences that may be applied include those established by statute, regulation, executive or administrative order, directive, policy, or practice. Upon determining such a preference exists, agencies may then reciprocate by applying the home-state preference against the non-resident bidder or offeror in the bid/proposal evaluation.

Solicitations should state that reciprocal preferences will be used where applicable.

If application of a reciprocal preference conflicts with a federal law or grant affecting the procurement contract, the provisions of the federal law or grant must prevail.

To assist agencies, we are appending a chart summarizing practices and laws in jurisdictions contiguous to Maryland. The Board of Public Works can make available the latest National Institute of Governmental Purchasing, Inc. (N.I.G.P.) Preference Report. Agencies are cautioned that the N.I.G.P. Report contains only the information that states have chosen to report to N.I.G.P., and no representations are made concerning its accuracy. Some jurisdictions may, for example, have preference policies that are not stated in the laws of the jurisdiction and are otherwise not reported to N.I.G.P. Contact your agency's assistant attorney general to verify the current status of other state's preference laws, before applying a reciprocal preference.

Questions concerning this Advisory may be addressed to:

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RESIDENCY PREFERENCE

Contiguous Jurisdictions

JURISDICTION	RECIPROCAL PREFERENCE	PRICE PREFERENCE	WORKFORCE RESIDENCY PREFERENCE	OTHER
VIRGINIA	Whenever any bidder is a resident of a state that gives a resident contractor a preference, a like preference maybe applied to the lowest responsible Virginia resident bidder. (Code of Va. §11-47)	Coal purchased for use in State facilities with State funds shall be procured using competitive bidding. Coal mined in Virginia receives a 4% price preference over coal mined elsewhere. (Code of Va. §11-47.1)		Tie bids decided in favor of Va. produced goods, services or construction, or by award to a Virginia business if such a choice is available. (Code of Va. §11-47)
WEST VIRGINIA	Reciprocal preferences in effect for construction.	2½% bid price preference on commodities and printing is given to resident bidders. (W.Va. Code §§ 5A-3-37 and 5A-3-37a)	2½% (additional) bid preference given if at least 75% of bidder's employees have been W. Va. residents for the 2 years preceding the bid opening date. A non-W.Va. business may qualify for this preference if it employs W.Va. residents. Preferences are cumulative.	By practice , W.Va. applies the preferences to the price proposal portion of an RFP response, and to all procurements of services.
DISTRICT OF COLUMBIA		5% bid price preference or 5 point RFP point preference for local business; 5% bid price preference or 5 point RFP point preference for disadvantaged business; 2% bid price preference or 2 point RFP point preference for local enterprise zone based vendor. Above may be cumulative. (D.C.	Contractor's "first source" for finding employees to work on government contract projects is the unemployment rolls through the D.C. Department of Employee Services. (D.C. Code §1-1163)	Certified local, disadvantaged or enterprise zone contractors are required to place 50% of the value of their subcontract if any with certified local, disadvantaged or small contractors. (D.C. Code §1-1153.3)

JURISDICTION	RECIPROCAL PREFERENCE	PRICE PREFERENCE	WORKFORCE RESIDENCY PREFERENCE	OTHER
		Code §1-1153.3)		
PENNSYLVANIA	<p><u>Preference for Supplies:</u> applies for supplies (over \$10,000) grown, produced, manufactured etc. in Pennsylvania, if other bidders home states give preference to their respective domestic supplies. (62 Pa. C S. §107)</p> <p><u>Preference for Bidder:</u> For contracts exceeding \$10,000 applies same preference against non-PA bidder that the State in which that bidder resides applies against a PA. resident bidder. (62 Pa. C.S. §107)</p>	Reciprocal only	<p>REPEALED 1998</p> <p>Laborers and mechanics employed on public works projects must have been residents of Pennsylvania for atleast 90 days before employment. Sanctions include denial of payment to contractor (43 Pa. Stat. § 51)</p> <p>REPEALED 1998</p>	Coal procured for use in heating State owned facilities must be produced from Pennsylvania mines.
DELAWARE			In <u>construction contracts</u> , the State and its contractors are required to give preference to employment of laborers, workman or mechanics who have established citizenship by residency in the State for 90 days. <u>Sanction:</u> Payment of a penalty equal to the	In A/E Selection, evaluation factors include "Geographical location" and "Distribution of work to individuals and firms (economic considerations)". (29 Del. Code §6981) By practice , "Local project development" is also included. A non-Delaware

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			compensation paid to any person in violation of this provision. (29 Del. Code §6962)	firm with no Delaware office receives 0 points under the geographical location factor whereas a Delaware based firm receives 5 points. For developing 100% of the project in Delaware (locally) 5 points are awarded. Zero points awarded if less than 25% of the project is developed locally